

### **REMARKS/ARGUMENTS**

The foregoing amendments in the claims are of formal nature, and do not add new matter.

Prior to the present amendment, Claims 49-58 were pending in this application, Claims 54-58 were allowed and Claims 49-53 were rejected on various grounds. With this amendment, Claims 49-53 have been cancelled. All cancellations and amendments were done without prejudice or disclaimer. Applicants expressly reserve the right to pursue any cancelled matter in subsequent continuation, divisional or continuation-in-part applications. In the following arguments, the rejections will be addressed in the order they are raised in the Final Office Action, with reference to the paragraph numbering used in the Final Office Action.

#### **Priority**

**Re 3:** Applicants note that the following priorities have been accorded to this application: the priorities of PCT/US98/24855 filed 11/20/98, U.S. Patent Application Serial No. 09/254,465 filed 3/5/99 and U.S. Patent Application Serial No. 09/953,499 filed 9/14/01.

#### **Claim Rejections – 35 U.S.C. § 112, first paragraph**

**Re 6:** Claims 49-53 were rejected under 35 U.S.C. §112, first paragraph, allegedly “as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.” In particular, according to the Examiner, the phrase “having at least 95% sequence identity” in Claim 49, line 1, represents a departure from the specification and the claims as originally filed. (Page 2 of the instant Final Office Action).

The rejection is moot in view of the cancellation of Claims 49-53, which was done without prejudice and without acquiescence to this rejection.

**Re 7:** Claims 49-53 are rejected under 35 U.S.C. §112, first paragraph, as allegedly “the specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.” The Examiner further alleges that the specification “does not reasonably provide enablement for

any isolated nucleic acid molecule comprising having at least 95% sequence identity to the polypeptide of SEQ ID NO:9.” (Page 3 of the instant Final Office Action).

The rejection is moot in view of the cancellation of Claims 49-53, which was done without prejudice and without acquiescence to this rejection. Therefore, the Examiner is respectfully requested to reconsider and withdraw the present rejection.

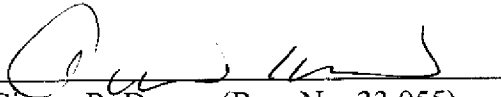
### **CONCLUSION**

Since all claims currently pending have been allowed, the present application is in *prima facie* condition for allowance, and an early action to that effect is respectfully solicited.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. **08-1641** (referencing Attorney’s Docket No. **39780-1216 R1D6**).

Respectfully submitted,

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